8: Lužbetak E-4 (no date) 1951 RH1 Caucasia RH1

§ 2. PREGNANCY

An expectant mother is no longer an ordinary woman in the eyes of the North Caucasians. She has assumed an entirely new value. The mountaineers of Caucasia look upon a murder of a pregnant woman as doubly serious, pregnancy being considered an aggravating circumstance. Thus in Sirgua District of the Province of Dargwa, the murderer must pay an additional 30 silver rubles to the mother's relatives besides the usual bloodwite for murder.[8] In many places an assault causing abortion is considered as serious as murder, and full bloodwite must be paid for the death of the foetus. If the mother dies too, a double bloodwite is demanded by the *adats*.[9] Or again, two persons will become blood-enemies (*qanly*) instead of one—the murderer and one of his kin—one to atone for the death of the mother and the other for the death of the unborn child.[10] Sometimes such cases are dealt with according to two distinct laws, the Islamic and customary.[11] In Ossetia, a pregnant woman becomes exempt from the more strenuous tasks, evidently, as a precaution agalnst miscarriage.[12]

§ 3. BIRTH AND PREFERENCE FOR BOYS

Since the Caucasians, all without exception, are strictly patrilocal, patriarchal and patrilineal, we need not wonder at the preference for boys that prevails throughout the Caucasus. It is the boy who perpetuates the family economically. He also perpetuates the family cult and gives the family prestige.

The NORTHWESTERN CAUCASIANS say "He who has no sons has no children."[13] But even girls are welcome,[14] though perhaps not without some disappointment. The girls are an asset to the family in as far as they are workers and a source of considerable income especially through the *kalym*. Hence, after the young wife becomes a mother of a boy or girl, she takes on a new character and is proud of becoming "fully a wife." She visits her father after her first child and on this occasion he gives her the rest of her bridal portion. Now she is permitted to take off her girl's cap and put on her matron's veil.[15]

The NORTHEASTERN CAUCASIANS. When an Ingush couple have become the parents of a baby boy there is indescribable rejoicing in the *aul*, and

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[8] "Adaty Darginskich Obščestv," SSKG, VII (1873), p. 73.

[9] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1875), pp. 35, 43, 47, 49.

[10] Cf. "Adaty Južno-Dagestanskich Obščestv," pp. 43, 47, 49.

[11] Cf. "Adaty Darginskich Obščestv," pp. 15, 36, 76. On page 15 we read: "Za ubijstvo beremennoj ženščiny, sverch obyknovennago vzyskanija po adatu, opredeljaetsja vzyskanie po šariatu."

[12] Pčelina, "Rodil'nye obyčai u Osetin," SE, 1937, No. 4, p. 89 ff, who deals with the Ossetine pregnancy customs at length. Many are the questions we might suggest to the Caucasologists regarding pregnancy, which have not yet been investigated. To mention but one important problem: What is the extent om "uncleanness" incurred through pregnancy? (Cf. Eristov, *op. cit.*, p. 114.)

[13] Ladyženskij, FT, p. 202.

[14] Maćavriani, "Nekotorija čerty iz žizni Abchazcev," SMOMK, IV (1884), No. 2, p. 45.

[15] Pallas, *Bemerkungen auf einer Reise in die südl. Statth. des russ. Reichs, etc.*, I, p. 388.

8: Luzbetak E-4 (no date) 1951 RH1 Caucasia RH1

Women are generally excluded from being conjurors. One of the most common forms of evidence in the *adat* courts is conjury, an oath taken by an established number of relatives of the defendant or plaintiff. Any hesitation, refusal of one of the conjurors to swear, or failure to find the required number of conjurors are considered undeniable evidence. The oath is taken by each of the conjurors either on the Koran, or sometimes toe *khatun-tallkh* must be sworn. The practice of conjury is found among all Caucasian mountain tribes: Cherkess, Chechens, Lesghians, Georgians, neighbouring Tartars, Kumyks, etc.[24] The number of conjurors required depends on the gravity of the crime, the penalty connected with it, and on the social position of the contending parties and conjurors. The following is an example of a catalogue of conjurors established for theft in Mikakhi District.

For stealing sheep:

one sheep	3 conjurors
two sheep	4 conjurors
three sheep	5 conjurors
four sheep	6 conjurors
more than four	6 conjurors

For stealing cows:

one cow	5 conjurors
two cows	10 conjurors
three cows	12 conjurors
more than three	12 conjurors

For stealing young domestic animals:

one colt less than three years old	6 conjurors
one one-year-old calf	3 conjurors
one two-year-old heifer	5 conjurors
one two-year-old ox	5 conjurors
one three-year-old ox	6 conjurors

This catalogue has been taken from the "Adat collection for the Districts of Dargwa Province."[25] For murder and crimes considered as serious as murder[26] the number of conjurors may be as high as 40. Generally only relatives may be conjurors. This requirement is evidently a reflection of the strong solidarity of the Caucasian sib: to swear falsely would bring ruin to the swearer, and should a large number of conjurors be required, the entire sib, living and dead, may be doomed.

The proof by conjury is recognized by Islamic law, but its existence in the Caucasus need not be attributed to Mohammedanism. (1) Even in Arabia, it pre-existed Islamism. In fact Mohammed merely borrowed and incorporated the *kazama* into his system.[27] (2) Moreover, it is a widespread institution among

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[24] See the various *adat* collections. See also Kovalevskij, *Coutume contemp.*, especially pp. 443 f: *Code of King Vakhtang VI*, Karst edition, pp. 60, 179.

[25] "Adaty Darginskich Obščestv," SSKG, VII (1873), p. 53.

[26] *Supra*, Chapters XII and XIII.

[27] Goldziher, "Muhammedanisches Recht in Theorie und Wirklichkeit," *Zeitsch. f. vergl. Rechtsw.*, VIII (1889), No. 3, p. 412.

562 695 peoples having a patriarchal organization, regardless of religion. We find it among the ancient Indo-European Slavs, Germans, and Ossetes.[28] (3) We also find it among non-Mohammedans of Caucasus.

After this lengthy degression we can offer a few examples to illustrate the relation of conjury to the unequal status of women. In Mugn District (Dargwa Province) women are not allowed to be conjurors. If less than 12 conjurors are required by any *adat*, not only must all conjurors be *male* relatives, but relatives of the *father*.[29] In Hyuraki District[30] and elsewhere[31] female relatives may participate in the conjury only if they are necessary to complete the required number of 40.[32]

[582] The inferior position of the female sex is further expressed in the *adats* determining the amount of bloodwite. Sometimes, it is true, no distinction is made whether a man or a woman is the victim,[33] but sometimes a definite distinction *is* made. The Kurins, for instance, have an established bloodwite of Rs. 250 for the death of a man and only Rs. 125 for the death of a woman.[34] The Ossetine bloodwite for the murder of a man is twice as high as that for a woman.[35]

§ 2. DIVISION OF LABOUR

462 The NORTHWESTERN CAUCASIANS. It is no longer true that all the work must be done by the female members of the family.[36] The men do the ploughing, woodchopping, hunting, and in general all the heavy work; the women do the usual housework, cook, wash, sew and mend clothes, and work in the garden.[37] Formerly, of course, the situation was quite different. The reports of the 18th and 19th century picture the Cherkess and the Abkhaz

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[28] Kovalevskij, *Coutume contemp.*, p. 460.

[29] "Adaty Darginskich Obščestv," p. 60. For *adats* of the Tsudakhar District, see "Adaty Darginskich Obščestv," pp. 111 f.

[30] "Adaty Darginskich Obščestv," p. 84.

[31] "Adaty Darginskich Obščestv," p. 71.

[32] If there are still not enough conjurors, the oath must be repeated till the required number of oaths is reached. ("Adaty Darginskich Obščestv," p. 84.)

[33] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1875), p. 47. When we use the words "crime" and "murder" we understand them in the sense of the *adats*. To be more exact we should rather say "damage" and "homicide." Customary law is not interested in *guilt*. It aims to repair damages done to the family and sib, whether that damage be intentional or accidental. If a horse accidentally kicks and kills a passer-by, both the rider and the owner of the horse become blood-enemies of the victim's sib (Leontovič, II, pp. 45 ff). Since customary law is not interested in guilt, it is not interested in *punishing*. It aims to *repair* the damages, hence it matters little whether the "criminal" himself or another member of his family or sib is "punished."

[34] "Adaty Južno-Dagestanskich Obščestv," p. 7.

[35] Dubrovin, *Istorija*, I, i, p. 340.
The position of the female sex in Khevsuria is somewhat better than elsewhere in the mountains (Požidaev, 106 f). She may even take her meals with her husband (Požidaev, *Gorcy severnogo Kavkaza*, p. 107). The Kumyks allow their wives more rights than are granted to women by the *adats* of the true Caucasians (Dubrovin, *Istorija*, I, ii, p. 639).

[36] Ladyženskij, FT, pp. 199 f.

[37] Ladyženskij, FT, p. 201.

8: Lužbetak E-4 (no date) 1951 RHI Caucasia RHI

for some Persian cloth worth Rs. 240. While the deal was still going on, the girl fled and hanged herself.[7]

We have found no purely Lesghian *adats* prohibiting or sanctioning the selling of children into slavery, in spite of the despotic authority of the father.[8] Although we do not know the attitude of customary law in this regard, we do know that the *šarī'a* strictly forbids not only the selling of a fellow-Mohammedan into slavery, but expressly condemns the selling of one's own children.[9]

The SOUTHERN CAUCASIANS. In times of famine the mountain tribes of Georgia used to sell their children; the Svans, for example, "for 700 to 1,200 francs each" (Mourier, *Guide au Caucase*, I, p. 147).

It was this same poverty that led their neighbours, the Tualti (SOUTHERN OSSETES), to kill their girls and sell their boys.[10]

In short, everywhere in the Caucasus the *right* to sell children is not disputed; the practice, however, is *rare*, except in time of absolute necessity or in regard to children who are not considered fully members of the family.

§ 2. JUS VITAE NECISQUE

The NORTHWESTERN CAUCASIANS. The *adats* expressly mention that a father does not have the right over life and death of his children.[11] However, he may condemn a *perverse* member of the family to death: he must, of course, first chastize him, then disinherit him, and finally, if all these means fail and the son remains incorrigeable, the father, acting as supreme judge of the family, may hand him over to a servant to be killed.[12] In spite of these *adats* it seems that formerly the father actually had the right to kill his child at will.[13]

The NORTHEASTERN CAUCASIANS. The Chechen adat collection of 1843 tells us that "there is no customary law defining or limiting the authority of the father over his children."[14] However, in practice, he enjoys this unlimited authority only as long as the children are small. Once his sons have grown up, they may take vengeance on their own father for killing one of their brothers.[15] It is quite possible that at one time the father actually possessed the *jus vitae necisque*, a right that had disappeared long before the *adat* collections of the past century were made. By no means does a husband have a right over the

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[7] *Voyage dans les steps d'Astrakhan et du Caucase*, II, p. 123.

[8] Cf. Omarov, "Kak živut Laki," SSKG, IV (1871), p. 18.

[9] G. Bergsträsser, *Grundzüge des islamischen Rechts*, p. 39.

[10] Kovalevskij, *Coutume contemp.*, p. 189.

[11] Leontovič, II, p. 250, § 138.

[12] *ibid.* See also Leontovič, I, p. 152, § 81.

[13] Dubrovin, *Istorija*, I, i, pp. 168 f; P. I. Kovalevskij, *Kavkaz, Narody Kavkaza*, p. 56.

[14] Leontovič, II, p. 112, § 8.

[15] M. O. Kosven, "Avunkulat," SE, 1948, No. 1, p. 18; Leontovič, II, pp. 112 (§ 8), 251 (§ 143), 258 (§ 206); Berže, *Čečnja i Čečency*, p. 96.

8: Lužbetak E-4 (no date) 1951 RHI Caucasia RHI

593
682

life of his wife.[16] According to a customary law of 1844 for Vladikavkaz District (Dzher, Kist, Galgai, Tsori, Ingushi, and Karabulak tribes), if a husband kills his wife, he must pay a bloodwite of 12 cows to her relatives if she has a child, and 85 cows if she has no children. Besides this payment he becomes a social outcast.[17]

The *adats* of the Lesghian mountaineers regarding the penalty for filicide and uxoricide fall into four distinct classes: (1) no penalty, (2) a very small fine, (3) conditional or optional death penalty, (4) obligatory death penalty.

If the father kills a son or daughter he goes unpunished in Gamri and in Mahallen Terekeme (Kaitago-Tabassaran Province),[18] in Tilitl-Hidatl (Gunib Province),[19] in the Naibate of Kuyada (Gunib Province), [20] and in other parts of Daghestan.

He is obliged to pay a relatively small fine, for example, in Sirgua District (Dargwa Province),[21] in Upper Kaitago,[22] Andalal (Gunib Province),[23] Bashli (Kaitago-Tabassaran Province),[24] Ratlu Akhvakh,[25] etc.

A few examples of a conditional death penalty would be: for instance, in Kurin Province a father who has killed one of his sons is obliged to pay a bloodwite only if the victim happened to have his own economically independent family, the bloodwite going to his children (if he has killed a daugther, he becomes a blood-enemy only if she happened to be married, the bloodwite in this latter case going to her husband);[26] or again, in Hyuraki District of the Province of Dargwa, a father becomes a blood-enemy only if the son he murdered is himself married and has children.[27]

By "optional death penalty" we understand all those *adats* which leave it to the children or heirs of the victim as to whether the murderer should be considered a *qanly* ("blood-enemy") or not. Such adats are found in the naibates of Tleiserukh,[28] Tilitl-Hidatl,[29] and Mikah (Dargwa Province).[30]

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[16] Berže, *op. cit.*, p. 99. Even in case of adultery the husband generally may only divorce and at most mutilate her (cf. Table 19).

[17] Leontovič, II, p. 115, § 6. It is an interesting fact that sometimes, as in this case, the wife becomes more detached from her own sib and more attached to that of her husband by giving birth to a child. In the latter case the bloodwite is only a third as high as the former.

[18] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1875), p. 49. Adaty Dagestanskoj Oblasti i Zakatal'skago Okruga, pp. 588, § 10; Cf. Dirr, AGKB, p. 58. We shall abreviate this collection of *adats* by ADOiZO.

[19] ADOiZO, p. 337, 12; cf. Dirr, AGKB, p. 58. Some villages of Tilitl-Hidatl impose capital punishment on a murderer of a son or daughter.

[20] ADOiZO, p. 313, § 12; cf. Dirr, AGKB, p. 58.

[21] "Adaty Darginskich Obščestv," SSKG, VII (1873), p. 73.

[22] "Adaty Južno-Dagestanskich Obščestv," p. 34: the murderer is obliged to pay a fine of one three-year-old ox to the district.

[23] The fine is only Rs. 6.

[24] ADOiZO, p. 597, § 10; cf. Dirr, AGKB, p. 58.

[25] ADOiZO, p. 178, § 38; cf. Dirr, AGKB, p. 58.

[26] ADOiZO, p. 510, § 13; cf. Dirr, AGKB, p. 61.

[27] "Adaty Darginskich Obščestv," p. 86.

[28] ADOiZO, p. 388 f, § 12; cf. Dirr, AGKB, p. 64 f.

[29] ADOiZO, pp. 337 f, §§ 31 f.

[30] ADOiZO, p. 136, § 42; cf. Dirr, AGKB, p. 67.

The last class of *adats* demand blood for blood. Such customary laws are found, for example, in the Dargwa Province: in Usisha District,[31] Tsudakhar,[32] Akusha District,[33] and in some towns of the naibate of Tilitl-Hidatl,[34] and in the Samur District.[35] The same holds if a husband kills his wife: he becomes a blood-enemy of the wife's relatives and sometimes of his own children. In Bashli (Kaitago-Tabassaran Province),[36] Mahallen Terekeme (Kaitago-Tabassaran Province),[37] Mahal Gamri (Kaitago-Tabassaran Province),[38] and in the Province of Samur,[39] a husband who has murdered his wife becomes a blood-enemy of her relatives. In Mahal Gamri he becomes a blood-enemy of his children as well.[40]

Ancient GEORGIAN *adats* permit the murderer to go unpunished, the crime being "left to the judgement of God."[41] A Khevsur who murders his wife is obliged to pay a bloodwite of five cows to her relatives.[42] The Svan custom of tying a large stone about the neck of a person who murdered one of his own kin (as a sign of excommunication) is most likely of Christian origin. It reminds us very much of a similar penalty for parricide in the Old Testament. It may, less probably though, have come to Svanetia through Islamism, for Mohammedanism has borrowed this form of excommunication from the Old Testament.[43]

The neighbouring KUMYKS do not punish a man for murdering his child either.[44] Uxoricide, however, never goes unpunished; the murderer becomes *a qanly* of the victim's sib.[45]

The ancient Indo-Europeans used to place the newborn child on the ground and then invite the father to pick it up, as an official recognition of the child as his own and at the same time expressing his wish not to use his right to kill it.[46] According to OSSETINE customary law, a father may kill his child with

[31] ADOiZO, p. 225, § 47; cf. Dirr, AGKB, p. 61; "Adaty Darginskich Obščestv," p. 102.
[32] ADOiZO, p. 244, § 40; cf. Dirr, AGKB, pp. 61 f; "Adaty Dauginskich Obščestv," pp. 113 f.
[33] "Adaty Darginskich Obščestv," p. 35. Also in Balhar, Tsumkan, according to ADOiZO, p. 115, § 43; cf. Dirr, p. 61.
[34] ADOiZO, p. 337, § 12; cf. Dirr, AGKB, p. 60.
[35] ADOiZO, p. 530, § 16; cf. Dirr, AGKB, p. 61.
[36] ADOiZO, pp. 597 f, §§ 14 f; cf. Dirr, AGKB, p. 65.
[37] ADOiZO, p. 583, § 9; cf. Dirr, AGKB, p. 65.
[38] ADOiZO, pp. 588 f, § 14; cf. Dirr, AGKB, pp. 65 f.
[39] ADOiZO, p. 530, § 14; cf. Dirr, AGKB, p. 66.
[40] ADOiZO, pp. 599 f, § 14; cf. Dirr, AGKB, pp. 65 f.
[41] Haxthausen, *Transcaucasia*, II, p. 205; Post, *Grundriß der ethnol. Jurisprudenz*, II, p. 340; cf. Dirr, AGKB, p. 59. These three authors base their assertion on King Vakhtang's Code. In § 78 we read: "... the case must be judged according to the *sdzhuli-kanoni*". Perhaps in the last analysis "sdzhuli-kanoni" can be identified with God; but actually these two words refer to the ecclesiastical laws codified by Patriarch John the Scholastic under Emperor Justinian (cf. Code of King Vakhtang VI, ed. Karst, p. 119, *note* 1).
[42] Hahn, *Bilder aus dem Kaukasus*, p. 184.
[43] Kovalevskij, *Zakon*, I, p. 40.
[44] Leontovič, II, p. 212, § 35 (an *adat* of 1865).
[45] "Adaty žitelej kumykskoj ploskosti," SSKG, VI (1872), p. 5.
[46] Schmidt-Koppers, *Völker und Kulturen*, p. 309.

[i.e. blood-enemy -- Analyst]

8: Lužbetak E-4 (no date) 1951 RHl Caucasia RHl

impunity, just as their ancestors could.[47] A husband may not sell or give his wife away.[48] Sometimes he may not kill his wife[49] even as a well deserved punishment. At the most he may in such a case chastize and mutilate her.[50]

§ 3. MATERNAL AUTHORITY

What authority does the mother enjoy in a North Caucasian family? We have already touched upon this question, when speaking about the education of children (*supra*, pp. 147 f) and the rights and privileges of women (*supra*, pp. 159 f). As a general rule throughout the Caucasus[51] the mother has by far more authority over her daughters than over her sons, more over her small boys than those of age.[52]

That is doubtless the case with the NORTHWESTERN CAUCASIANS. The *adats* expressly say that the mother enjoys much more authority over her daughters than over her sons.[53] That she has less authority or none at all with her grown-up boys is clear from the "Adat Collection of the Black Sea Line, Kuban and Terek Territories" (§ 135). In spite of the exaggeration contained in this particular *adat* it is worth quoting: as soon as the sons become of age, the mother "hardly enjoys the respect which nature herself implanted in man's heart, the respect for her to whom the sons owe their very existence."[54]

In NORTHEAST CAUCASIA, a Chechen mother, though exerting much influence on her children, enjoys absolutely no *right* over their person.[55] The relation between mother and child among the Lesghians is regulated by Islamic law,[56] which however differs very little from that of the other North Caucasians. According to Islamic law, the mother has more rights over her girls than over her boys; the girls are subject to her till they become of age; the boys, only till they are seven or nine years old.[57] Her authority can be compared to that of a tutor, and generally the father will not interfere. The right over the person of the child is everywhere in the Caucasus a right exclusively enjoyed by the father.

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[47] Leontovič, II, p. 26, § 98.

[48] Leontovič, II, p. 27, § 103.

[49] Kovalevskij, *Coutume contemp.*, p. 348.

[50] Leontovič, II, p. 26, § 101.

[51] Leontovič, II, p. 251, § 145: "Cto kasaetsja prav roditelej nad dočer'mi, to takovyja kak u čečencev, tak i u všech drugich gorskich plemen, soveršenno odinakovy."

[52] Leontovič, II, pp. 250 (§ 134), 251 (§ 147).

[53] Leontovič, II, p. 251, § 147.

[54] Leontovič, II, p. 250 (§ 135), II, p. 112 (8).

[55] Leontovič, II, p. 112, § 8.

[56] Kovalevskij, *Zakon*, II, p. 201.

[57] Bergstrasser, *Grundzüge des islamischen Rechts*, p. 87.